



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार में प्रकाशित

PUBLISHED BY AUTHORITY

सं. 49] नई दिल्ली, शनिवार, सितम्बर 3, 1977/भाद्र 12, 1899

No. 49] NEW DELHI, SATURDAY, 3 SEPTEMBER 1977/BHADRA 12, 1899

इस भाग में भिन्न पृष्ठ संलग्न वी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilationMINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 3rd September, 1977/Bhadra 12, 1899 (Saka)

THE PAYMENT OF BONUS (AMENDMENT)
ORDINANCE, 1977

No. 9 OF 1977

Promulgated by the President in the Twenty-eighth
Year of the Republic of India.An Ordinance further to amend the Payment of Bonus
Act, 1965.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action,

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance —

1. (1) This Ordinance may be called the Payment of Bonus (Amendment) Ordinance, 1977. Short title and commencement

(2) It shall come into force at once

2. The Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act) shall,— Act 21 of 1965 to have modified effect for a particular period.

(a) in relation to a factory or other establishment to which the principal Act applies immediately before the commencement of this Ordinance; and

(b) in relation to a banking company and the Industrial Reconstruction Corporation of India to which the principal Act applies on and from such commencement by virtue of this Ordinance, have effect in respect of the accounting year commencing on any day in the year 1976 as if the amendments specified in sections 3 to 19 had been made in that Act

Explanation.—In this section, the expressions “banking company” and “accounting year” shall have the meanings respectively assigned to them in clauses (8) and (1) of section 2 of the principal Act

Substitution of long title.

3 In the principal Act, for the long title, the following long title shall be substituted, namely :—

“An Act to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith”

Amendment of section 2.

4 In section 2 of the principal Act, in sub-clause (a) of clause (4), after the words “being a company”, the brackets and words “(other than a banking company)” shall be inserted.

Substitution of new section for section 4.

5. For section 4 of the principal Act, the following section shall be substituted, namely :—

Computation of gross profits.

“4. The gross profits derived by an employer from an establishment in respect of the accounting year shall—

(a) in the case of a banking company, be calculated in the manner specified in the First Schedule ;

(b) in any other case, be calculated in the manner specified in the Second Schedule.”.

Amend-
ment of
section 6.

6. In section 6 of the principal Act,—

(a) in clause (b), for the words “development rebate or development allowance”, the words “development rebate or investment allowance or development allowance” shall be substituted ;

(b) in clause (d), for the words “Second Schedule”, the words “Third Schedule” shall be substituted

Amend-
ment of
section 10.

7. In section 10 of the principal Act,—

(a) after sub-section (2), the following sub-section shall be inserted, namely :—

‘(2A) Notwithstanding anything contained in sub-section (1), every employer shall be bound to pay to every employee a minimum bonus which shall be 8 33 per cent. of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year .

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this sub-section shall have effect in relation to such employee as if for the words “one hundred rupees”, the words “sixty rupees” were substituted.’;

(b) in sub-section (3), for the words “Third Schedule”, the words “Fourth Schedule” shall be substituted.

8. In section 15 of the principal Act, for the words "Third Schedule" wherever they occur, the words "Fourth Schedule" shall be substituted. Amend-
ment of
section 15

9. In section 16 of the principal Act, in sub-section (1B), for the words "Third Schedule" at both the places where they occur, the words "Fourth Schedule" shall be substituted. Amend-
ment of
section 16

10. In section 21 of the principal Act, in the *Explanation*, for the words and figures "sections 22, 23 and 25", the words and figures "sections 22, 23, 24 and 25" shall be substituted. Amend-
ment of
section 21.

11. In section 23 of the principal Act, in sub-section (1), for the word and figures "section 25", the words and figures "sections 24 and 25" shall be substituted. Amend-
ment of
section 23.

12. After section 23 of the principal Act, the following section shall be inserted, namely :— Insertion
of new
section 24.

"24. (1) Where any dispute of the nature specified in section 22 between an employer, being a banking company, and its employees has been referred to the said authority under that section and during the course of proceedings the accounts of the banking company duly audited are produced before it, the said authority shall not permit any trade union or employees to question the correctness of such accounts, but the trade union or the employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus due under this Act. Audited
accounts
of bank-
ing
companies
not to be
ques-
tioned

(2) Nothing contained in sub-section (1) shall enable the trade union or the employees to obtain any information which the banking company is not compelled to furnish under the provisions of section 34A of the Banking Regulation Act, 1949.". 10 of 1949.

13. In section 27 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely :— Amend-
ment of
section 27.

"(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of, any of its books of account or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of section 34A of the Banking Regulation Act, 1949.". 10 of 1949.

14. In section 31A of the principal Act, in the proviso, for the words "Provided that", the words "Provided further that" shall be substituted and before the proviso as so amended, the following proviso shall be inserted, namely — Amend-
ment of
section
31A.

"Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under sub-section (2A) of section 10 shall be null and void in so far as it purports to deprive them of such right".

15. In section 32 of the principal Act,—

- (a) clause (vii) shall be omitted ; Amend-
ment of
section 32.
- (b) in clause (ix),—
- (i) sub-clause (ff) shall be omitted ;

(ii) in sub-clause (g), after the words "financial institution", the brackets and words "(other than a banking company)" shall be inserted.

Substitution of new section for section 34.

Employees and employers not to be precluded from entering into agreements for grant of bonus under a different formula.

16. For section 34 of the principal Act, the following sections shall be substituted, namely :—

"34. Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act :

Provided that no such agreement shall have effect unless it is entered into with the previous approval of the appropriate Government :

Provided further that any such agreement whereby the employees relinquish their right to receive the minimum bonus under sub-section (2A) of section 10 shall be null and void in so far as it purports to deprive them of such right:

Provided also that such employees shall not be entitled to be paid bonus in excess of—

(a) 8 33 per cent. of the salary or wage earned by them during the accounting year if the employer has no allocable surplus in the accounting year or the amount of such allocable surplus is only so much that, but for the provisions of sub-section (2A) of section 10, it would entitle the employees only to receive an amount of bonus which is less than the aforesaid percentage, or

(b) twenty per cent. of the salary or wage earned by them during the accounting year.

Effect of laws and agreements inconsistent with the Act.

Amendment of the First Schedule.

34A. Subject to the provisions of sections 31A and 34, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.".

17 In the principal Act, the First Schedule shall be renumbered as the Second Schedule and,—

(a) in that Schedule as so renumbered—

(i) for the brackets, words and figure "(See section 4)", the brackets, words, figure and letter "[See section 4(b)]" shall be substituted ;

(ii) in column (2), against Item No. 2, for the entry "(d) Development rebate/Development allowance reserve." the entry "(d) Development rebate/Investment allowance/Development allowance reserve." shall be substituted ;

(b) before that Schedule as so renumbered, the following Schedule shall be inserted, namely :—

‘THE FIRST SCHEDULE

[See section 4(a)]

COMPUTATION OF GROSS PROFITS

Accounting Year ending.....

| Item No. | Particulars | Amount of | Amount of | Remarks |
|-------------|--|-----------|------------|-------------------|
| | | sub-items | main-items | |
| | | Rs. | Rs. | |
| *1. | Net Profit as shown in the Profit and Loss Account after making usual and necessary provisions. | | | |
| 2. | Add back provision for : | | | |
| | (a) Bonus to employees. | | | |
| | (b) Depreciation. | | | |
| | (c) Development Rebate Reserve. | | | See foot-note (1) |
| | (d)* Any other reserves. | | | See foot-note (1) |
| | Total of Item No. 2 | Rs. | | |
| 3. | Add back also : | | | |
| | (a) Bonus paid to employees, in respect of previous accounting years. | | | See foot-note (1) |
| | (b) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of— | | | |
| | (i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and | | | |
| | (ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason. | | | |
| | (c) Donations in excess of the amount admissible for income-tax. | | | |
| | (d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax). | | | See foot-note (1) |

*Where the profit subject to taxation is shown in the Profit and Loss Account and the provision made for taxes on income is shown, the actual provision for taxes on income shall be deducted from the profit.

| Item No. | Particulars | Amount of sub-items | Amount of main-items | Remarks |
|-------------|---|---------------------|----------------------|-------------------|
| | | Rs. | Rs. | |
| (e) | Any amount certified by the Reserve Bank of India in terms of sub-section (2) of section 34A of the Banking Regulation Act, 1949. | | | 10 of 1949 |
| (f) | Losses of, or expenditure relating to, any business situated outside India. | | | |
| | Total of Item No. 3 | Rs. | | |
| 4. | Add also income, profits or gains (if any) credited directly to published or disclosed reserves, other than— | | | |
| (i) | capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax); | | | |
| (ii) | profits of, and receipts relating to, any business situated outside India; | | | |
| (iii) | income of foreign banking companies from investments outside India. | | | |
| | Net total of Item No. 4 | Rs. | | |
| 5. | Total of Item Nos. 1, 2, 3 and 4 | Rs. | | |
| 6. Deduct : | | | | |
| (a) | Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax) | | | See foot-note (2) |
| (b) | Profits of, and receipts relating to, any business situated outside India. | | | See foot-note (2) |
| (c) | Income of foreign banking companies from investments outside India. | | | See foot-note (2) |
| (d) | Expenditure or losses (if any) debited directly to published or disclosed reserves, other than— | | | |
| (i) | capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax); | | | |

| Item No. | Particulars | Amount of sub-items | Amount of main-items | Remarks |
|----------------------------|--|------------------------|-------------------------|-------------------|
| | | Rs. | Rs. | |
| | (ii) losses of any business situated outside India. | | | |
| (e) | In the case of foreign banking companies proportionate administrative (overhead) expenses of Head Office allocable to Indian business. | | | See foot-note (3) |
| (f) | Refund of any excess direct tax paid for previous accounting years and excess provision, if any, of previous accounting years, relating to bonus, depreciation, or development rebate, if written back. | | | See foot-note (2) |
| (g) | Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes. | | | See foot-note (2) |
| Total of Item No. 6 | | <hr/> | <hr/> | 1 of 1956. |
| 7. | Gross profits for purposes of bonus (Item No. 5 minus Item No. 6) | <hr/> | <hr/> | |

Explanation.—In sub-item (b) of item 3, “approved gratuity fund” has the same meaning assigned to it in clause (5) of Section 2 of the Income-tax Act.

Foot-notes—

- (1) If, and to the extent, charged to Profit and Loss Account.
- (2) If, and to the extent, credited to Profit and Loss Account
- (3) In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated Profit and Loss Account, adjusted as in Item No. 2 above only).

18 In the principal Act, the Second Schedule shall be renumbered as the Third Schedule and in that Schedule as so renumbered,—

(a) in column (2), against Item No. 1, for the word “company”, the words “company, other than a banking company” shall be substituted;

Amend-
ment of
the
Second
Schedule.

(b) after Item No. 1 and the entries relating thereto, the following item and entries shall be inserted, namely —

(1)

(2)

(3)

"2. Banking company

(i) The dividends payable on its preference share capital for the accounting year calculated at the rate at which such dividends are payable;

(ii) 7.5 per cent. of its paid up equity share capital as at the commencement of the accounting year;

(iii) 5 per cent. of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profit carried forward from the previous accounting year;]

(iv) any sum which, in respect of the accounting year, is transferred by it—

(a) to a reserve fund under subsection (1) of section 17 of the Banking Regulation Act, 1949; or 10 of 1949.

(b) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India, ¶

whichever is higher :

Provided that where the banking company is a foreign company within the meaning of section 591 of the Companies Act, 1956 48 of 1956, the amount to be deducted under this Item shall be the aggregate of—

(i) the dividends payable to its preference shareholders for the accounting year at the rate at which such dividends are payable on such amount as bears the same proportion to its total preference share capital as its total working funds in India bear to its total world working funds;]

(ii) 7.5 per cent. of such amount as bears the same proportion to its total paid up equity share capital as its total working funds in India bear to its total world working funds;

(iii) 5 per cent. of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds;

(1)

(2)

(3)

10 of 1949.

(iv) any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of sub-section (2) of section 11 of the Banking Regulation Act, 1949, not exceeding the amount required under the aforesaid provision to be so deposited.”;

(c) in the *Explanation*, for the figures, brackets and word “1(iii) and 3(ii)” the figures, brackets and word “1(iii), 2(iii) and 3(ii)” shall be substituted.

19. In the principal Act, the Third Schedule shall be renumbered as the Fourth Schedule.

Amend-
ment of
the
Third
Schedule

N. SANJIVA REDDY,
President.

K. K SUNDARAM,
Secy to the Govt. of India.

